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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/565,630

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Chatrine Stridfeldt

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466 7590 04/02/2010

YOUNG & THOMPSON
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Alexandria, VA 22314

EXAMINER

KIDWELL, MICHELE M

ART UNIT

PAPER NUMBER

3761

NOTIFICATION DATE

DELIVERY MODE

04/02/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

Office Action Summary	Application No. 10/565,630	Applicant(s) STRIDFELDT ET AL.	
	Examiner Michele Kidwell	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-16, 20 and 24-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-16, 20 and 24-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/30/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 28, 2010 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 26 – 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 26 recites the limitation "the distance layer" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 27 recites the limitation "the distance layer" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13 – 16, 20 and 24 – 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bewick-Sonntag et al. (US 6,232,521) in view of Noda et al. (US 2001/0044611).

With respect to claims 14 – 16, 20, 24 and 26 – 27, Bewick-Sonntag et al. (hereinafter “Bewick”) discloses a breathable backsheet comprising a liquid impermeable, water vapor permeable first and second layers with an absorbent body adjacent the first layer (col. 6, lines 1 - 12), an absorbent article adapted to function as claimed (figure 1) wherein the backsheet includes a condensation zone (space) between the first and second layers. The raised portions (i.e., topographical features) are considered to be the attached areas while unattached areas are considered depressed in relation to attached, or raised, areas as shown as layers 22/25 in figure 2.

The functionality of the article (i.e. first and second amounts of mass flow water vapor) appear to be a direct result of the structure and would therefore be met by Bewick since Bewick provides all structural elements in the same configuration as claimed. Furthermore, the examiner notes that the layers are "adapted to" provide

Art Unit: 3761

specific functions, and the article of Bewick is fully capable of performing the recited function.

The difference between Bewick and claim 24 is the explicit teaching that the hydrophobic distance element is placed in the condensation zone creating a specific space between the first and second layers.

In col. 6, lines 8 – 9, Bewick discloses that the backsheet may include additional layers.

It would have been obvious to one ordinary skill in the art to utilize an additional backsheet layer in the configuration of Bewick because Bewick anticipates the use of such. This additional layer creates additional spacing.

With respect to the specific amount of spacing, Noda et al. (hereinafter “Noda”) teaches a hydrophobic element with a thickness greater than 0.1 mm.

It would have been obvious to one of ordinary skill in the art to provide Bewick with a layer having a thickness greater than 0.1 mm, thereby resulting in a space between the layers of at least 0.1 mm because such a thickness results in a backsheet with a good texture or feel as taught by Noda in [0034].

The difference between Bewick and claim 13 is the provision that the element comprises a number of particles.

It would have been obvious to one of ordinary skill in the art to provide a number of hydrophobic particles as opposed to the one particle taught by Bewick since it has been held that the mere duplication of essential working parts is within the level of ordinary skill in the art.

The difference between Bewick and claim 25 is the provision that the hydrophobic distance element is in a specific form.

Absent a teaching of unexpected result, the examiner contends that the substitution of one type of hydrophobic distance element for another is within the level of ordinary skill in the art.

As to claim 28, see the rejection of claim 13.

Response to Arguments

Applicant's arguments filed January 28, 2010 have been fully considered but they are not persuasive.

The applicant argues that Bewick fails to describe any "space" between the layers. However, as the layers are not laminated and are expressly disclosed as being in direct contact with each other (i.e., adjacent to one another), there is inherently a "space" between the layers.

The applicant also argues that the Bewick fails to teach that the additional layers could be arranged to function as a condensation zone. The examiner notes that page 5 of the instant specification simply defines the condensation zone as an open volume (i.e., space) between the first and second layers. As applicant has acknowledged in the Remarks, Bewick provides additional layers, which in turn will provide additional spacing and/or an open volume. Therefore, the limitations as claimed have been met.

Likewise, the hydrophobic distance element is simply defined as being placed in the condensation zone. See page 4, lines 22 – 24 of the instant specification. There

are examples of what the hydrophobic distance element may include (i.e., hydrophobic particles, raised portions, etc), but these are exemplary and do not unequivocally define the element.

The applicant argues the purpose/function of the elements of Bewick. However, the examiner contends that the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. The fact that the claimed invention may be using the same materials disclosed by Bewick for a different purpose does not preclude the fact that the layers of Bewick will still function in a capacity as claimed by applicant.

Lastly, with respect to the functionality of the article and/or layers (i.e. first and second amounts of mass flow water vapor, condensing and storing water, etc.) appear to be a direct result of the structure and would therefore be met by Bewick since Bewick provides all structural elements in the same configuration as claimed. Furthermore, the examiner notes that the layers are "adapted to" provide specific functions, and the article of Bewick is fully capable of performing the recited function.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone

Art Unit: 3761

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michele Kidwell/
Primary Examiner, Art Unit 3761